IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

MFA.No. 1510 of 2001

OPMV.271/1993 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT/PETITIONER IN OP MV

SUBRAN, VETTIYATTIL HOUSE,
CHALAKKUDI VILLAGE,
MUKUNGAPURAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS
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1. **K.O. VARGHESE,**
KANNAMPUZHA HOUSE,
ALAGAPPANAGAR P.O.,
THRISSUR DIST.

2. **ANTONY P.T.,**
PONNARI HOUSE,
AMBALLUR, THRISSUR DIST.

3. **BRANCH MANAGER,**
UNITED INDIA INSURANCE CO. LTD.,
MUNICIPAL BUILDING,
THRISSUR ROAD, KUNNAMKULAM.

BY ADV. SRI.R.S.KALKURA -- R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1510 OF 2001

Dated 1st December, 2007

JUDGMENT

Koshy,J.

Appellant/claimant sustained serious injuries in a motor accident. He claimed a compensation of Rs.1,50,000/= contending that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. The total amount awarded by the Tribunal was only Rs.35,000/=. Quantum of compensation alone is disputed in this appeal. According to the appellant, he was a headload worker earning Rs.2,500/= as monthly income. Ext.A13 certificate was issued by the Town Head loading Union, Chalakkudy stating that his monthly average income was Rs.2,500/=. It is contended that even an unskilled worker at that time in Kerala would have got Rs.100/= per day and he would have got work for 25 days in a month. It is also pointed out that notional income of a non-earning person like a minor child also is fixed as Rs.1,250/= (Rs.15,000/= per year). Appellant was a youngster aged 28 years earning his livelihood for himself and his family and, therefore, we are of the opinion that at least Rs.1,600/= can be fixed as the monthly income. Tribunal has taken Rs.800/= as the monthly income. Even though the disability certificate issued by the doctor shows that there is 14% disability, considering the

nature of difficulties, Tribunal has taken only 7% disability. Ext.A11 is the disability certificate. The doctor certified that, the appellant was found to have anteriomedial instability of the right knee, osteoarthritis of right knee with pain, he was found to be having decreased sensation in the right infraorbital area. The patient has difficulty to climb up and down to run fast or walk long distance or to turn on right leg or to carry heavy weight. On these findings the doctor assessed 14% disability to the appellant as a household worker. Considering the nature of injuries and disability certificate, we are of opinion that at least 10% disability ought to have been taken. If that be so, compensation payable will be Rs.34,560/= (Rs.1,600 x 12 x $\frac{10}{100}$ x 18). Tribunal has awarded only Rs.12,100/=. So, the appellant is entitled to an additional amount of Rs.22460/= under this head. The Tribunal has also granted Rs.4,800/= for actual loss of earnings. Tribunal was of the view that for six months he was unable to do any work and six months' wages was given as actual loss of earnings. Since we have taken Rs.1,600/= as the monthly income, he is entitled to an additional amount of Rs.4,800/= under this head. Even though it was argued that compensation awarded under all other heads are inadequate, considering the total amount awarded, we are of the opinion that no enhancement is necessary under other heads. Thus, the additional amount of Rs.27,260/= should be

deposited by the third respondent insurance company, over and above the decreed amount by the Tribunal, with 7.5% interest from the date of application till its deposit. On deposit of the amount , the appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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